IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.586 OF 2007
WITH
CIVIL APPLICATION NO.673 OF 2007

Chandrakant Shankar
Nagvekar & Ors. .. Appellants.
Vs.
Waman Shankar
Nagvekar & Ors. .. Respondents.

Mr.R.S.Apte with Mr.Saikumar Rammurthy for the appellants.
Mr.P.S.Dani for respondent no.1.

CORAM : D.B.BHOSALE, JJ.
DATED : 29TH AUGUST, 2007.
P.C.:

. Heard learned counsel for the parties.

2. This second appeal by the original plaintiff challenges the judgment and order dated 20.2.2007 rendered by the first appellate court reversing the judgment and order of the trial Court insofar as the suit property described in plaint para 2A is concerned. The suit was for partition. Against the decree of partition defendant No.1 had filed civil appeal challenging the findings of the trial Court in respect of the property described in plaint paragraph no.2A. The appellate court has held that the property described in plaint paragraph 2A is self acquired property of defendant no.1.

3. Mr.Apte, learned counsel for the appellants challenged the findings of the appellate court on the ground that once the existence of the joint family is held to be proved there is a presumption that all the properties are joint and defendant no.1 has failed to discharge burden or to prove that the property described in plaint paragraph 2A are self acquired property. Secondly, he submitted that defendant no.1, who is eldest member in the family, the loan document supports their contention that the property was purchased in his name as a Karta of the family.

4. I perused the judgment of the appellate court so also the judgment of the trial Court. It appears and it is also undisputed that the sale deed was in favour of defendant no.1 alone and it was executed on 3.3.1972. The entries in the revenue record were effected in pursuance thereof showing the name of defendant no.1 only and admittedly they were not challenged by the plaintiff at any point of time. It further appears that the loan was obtained by defendant no.1 and it was also repaid by him alone. All these facts were taken into consideration by the appellate court for allowing the appeal filed by defendant no.1. It further appears that defendant no.1 was working since 1958 and the suit property was

purchased in 1962 for a sum of Rs.4,000/-. The loan was obtained by defendant no.1 for development of the property in which it is true that the names of all family members were mentioned. Merely because the names of other family members were mentioned in the loan form in the column provided in the loan application does not necessarily mean that the loan was obtained by defendant no.1 as Karta of the family. The document does not say so. It may also be noticed that in the plaint the plaintiff has set up the case that plaintiff nos.1 and 2 paid Rs.2,000/- each for purchasing property described in plaint para no.2A. However, they were not examined in support of this claim. In my opinion, the findings recorded by the appellate court are entirely based on the evidence on record and I do not find any reason to interfere with the findings of fact in the second appeal. In the circumstances this appeal is dismissed. Consequently, civil application is also dismissed.

(D.B.BHOSALE, J.)